

# EXHIBIT A

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : Case No.:23-MAG-6928

Plaintiff, :

-against- :

TERRENCE ALLEN, : New York, New York

Defendant. : October 30, 2023

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TRANSCRIPT AND STATUS CONFERENCE HEARING

BEFORE THE HONORABLE GARY STEIN

UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For Plaintiff: UNITED STATES ATTORNEY'S OFFICE  
SOUTHERN DISTRICT OF NEW YORK  
BY: Joseph H. Rosenberg, AUSA  
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New York, New York 10007

For Defendant: FEDERAL DEFENDERS OF NEW YORK  
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Proceedings recorded by electronic sound recording;  
Transcript produced by transcription service.

1 THE DEPUTY CLERK: In the matter of  
2 23-mag-6928; USA versus Terrence Allen.

3 Counsel, may you state your name for the  
4 record, starting with the government.

5 MR. ROSENBERG: Good evening, Your Honor.

6 This is Joseph Rosenberg, on behalf of  
7 the United States. With me at counsel table is my  
8 colleague from the U.S. Attorney's Office,  
9 Ms. Chelsea Chisholm, and Special Agent, from the  
10 FBI, Alex Felicias.

11 THE COURT: Good evening to all of you.

12 MS. LEVINE: Good evening again.

13 The Federal Defenders of New York by  
14 Sylvie Levine, on behalf of Mr. Allen.

15 THE COURT: Good evening, Ms. Levine.

16 May I have the time and date and time of  
17 arrest?

18 MR. ROSENBERG: Yes, Your Honor. The  
19 defendant was arrested this morning, October 30th,  
20 at approximately 7 a.m.

21 THE COURT: Okay. Good evening, Mr.  
22 Allen.

23 THE DEFENDANT: Good evening.

24 THE COURT: I am Magistrate Judge Stein.

25 You are here because you've been arrested

1 on a criminal complaint. The purpose of today's  
2 proceeding is to advise you of certain rights that  
3 you have, to inform you of the charges against you,  
4 to determine whether counsel should be appointed for  
5 you, and to decide under what conditions, if any,  
6 you should be released pending trial.

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: I'm going to explain certain  
9 constitutional rights that you have.

10 You have the right to remain silent. You  
11 are not required to make any statements. Even if  
12 you have already made statements to the authorities,  
13 you need not make any further statements. Any  
14 statements that you do make could be used against  
15 you.

16 You have the right to be released, either  
17 conditionally or unconditionally pending trial,  
18 unless I find that there are no conditions that  
19 would reasonably ensure your presence at future  
20 court appearances and the safety of the community.

21 If you are not a U.S. citizen -- and I  
22 know that you are -- you have the right to request  
23 that a consular officer from your country of origin  
24 be notified of your arrest. In some cases, a treaty  
25 or other agreement may require the government to

1 give that notice whether you request it or not. I  
2 am required by law to tell you this, even if you are  
3 a U.S. citizen and it doesn't apply to you.

4 You have the right to be represented by  
5 an attorney during all court proceedings, including  
6 this one, and during all questioning by the  
7 authorities. You also have the right to hire your  
8 own attorney, but if you cannot afford to hire your  
9 own attorney, you have the right to have an attorney  
10 appointed for you, and I would do that today.

11 Is there an affidavit of financial  
12 condition in this case?

13 MS. LEVINE: Yes, Your Honor.

14 THE COURT: Do we have that? Oh, I have  
15 it.

16 Mr. Allen, I have before me a financial  
17 affidavit that I'm holding up that appears to bear  
18 your signature under penalty of perjury.

19 Sir, is that, in fact, your signature on  
20 the financial affidavit?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Please be aware that if  
23 you've made any false statements in this affidavit,  
24 you can be charged with perjury.

25 Do you understand that?

1 THE DEFENDANT: Yes.

2 THE COURT: Based on the statements  
3 you've made in the financial affidavit, I am  
4 approving your application and appointing Ms. Levine  
5 to represent you.

6 I also have before me the criminal  
7 complaint containing the charges against you. The  
8 complaint charges you with one count of possession  
9 of ammunition after a felony conviction in violation  
10 of Title 18, United States Code, § 922(g)(1).

11 Ms. Levine, have you received a copy of  
12 the complaint and reviewed it with your client?

13 MS. LEVINE: Yes, Your Honor.

14 THE COURT: Thank you.

15 Mr. Allen, you have the right to a  
16 preliminary hearing. At a preliminary hearing, the  
17 government would have the burden of establishing  
18 that there is probable cause to believe that the  
19 crime with which you are being charged has been  
20 committed, and that you are the person who committed  
21 it. You or your counsel would be entitled to cross  
22 examine any witnesses and introduce evidence at that  
23 hearing.

24 If you are in custody, you have the right  
25 to have the preliminary hearing held within 14 days

1 of today. If you are not in custody, you have the  
2 right to have the preliminary hearing held within 21  
3 days. However, a preliminary hearing will not be  
4 held if before the date it is scheduled to take  
5 place, you are indicted by a grand jury or an  
6 information is filed against you by the government.

7 Do you understand that?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: I will set a date for the  
10 preliminary hearing at the conclusion of these  
11 proceedings.

12 Is there an agreement regarding Mr.  
13 Allen's release or detention pending trial?

14 MR. ROSENBERG: There is not, Your Honor.

15 THE COURT: What is the government's  
16 position?

17 MR. ROSENBERG: The government seeks  
18 detention on the grounds of both flight and  
19 dangerousness, Your Honor.

20 THE COURT: Okay.

21 And, Ms. Levine, I take it you oppose  
22 that?

23 MS. LEVINE: Correct.

24 THE COURT: Okay.

25 And on what basis does the government

1 understand it is entitled to a detention hearing?

2 MR. ROSENBERG: Your Honor, the  
3 government is entitled to a detention hearing here  
4 because the crime charged in the complaint, the  
5 unlawful possession of ammunition by a felon is  
6 categorically a crime of violence within the meaning  
7 of the Bail Reform Act under Title 18, United States  
8 Code, § 3142(f)(1)(A).

9 THE COURT: *U.S. v. Watkins*?

10 MR. ROSENBERG: *U.S. v. Watkins*. Yes,  
11 Your Honor.

12 THE COURT: But this is not a presumption  
13 case, correct?

14 MR. ROSENBERG: This is not.

15 THE COURT: Okay.

16 Mr. Allen?

17 THE DEFENDANT: Yes.

18 THE COURT: I am required under the law  
19 to release you either with or without conditions  
20 imposed, unless I determine that there are no  
21 conditions that will reasonably assure your  
22 appearance in court as required and the safety of  
23 the community. I mentioned that before.

24 In this case, the government has asked  
25 that you be detained without bail, and the

1 government is entitled to make that request because  
2 you have been charged with what is considered a  
3 crime of violence under the relevant statute. I,  
4 therefore, must determine whether any condition or  
5 combination of conditions of release will protect  
6 the safety of the community and reasonably assure  
7 your appearance at trial.

8 In making this determination, I'm  
9 required to consider several factors, including the  
10 nature and circumstances of the offense with which  
11 you were charged, the weight of the evidence against  
12 you, your history and characteristics, and the  
13 nature and seriousness of the danger to any person  
14 or the community that would be posed by your  
15 release.

16 The government bears the burden here of  
17 establishing either by clear and convincing evidence  
18 that there are no conditions that can ensure the  
19 safety of the community, or by establishing by a  
20 preponderance of the evidence, that there are no  
21 conditions that can ensure your appearance as  
22 required.

23 So that's the framework, the legal  
24 framework for this decision.

25 And I will now hear argument from

1 counsel, beginning with Mr. Rosenberg.

2 MR. ROSENBERG: Thank you, Your Honor.

3 The government concurs with Pretrial  
4 Services' recommendation of detention in this case.  
5 This case concerns an individual who opened fire in  
6 the courtyard of a New York City Housing Authority  
7 complex in the Bronx at 8:28 p.m. on a Thursday  
8 night when other people were around. He didn't fire  
9 just one shot or two. He fired 13 out to his side,  
10 not straight into the air, and then he calmly walked  
11 back into the apartment building from where he came.  
12 It's only lucky that no one was hurt or killed that  
13 night.

14 The charged offense is a crime of  
15 violence under the Bail Reform Act, as already  
16 mentioned, and it involves a firearm. And those are  
17 factors to be considered under § 3142, and they  
18 weigh in favor of detention.

19 Regarding the offense charged here,  
20 Your Honor, I've already described it, and it's  
21 described in detail in the complaint. The defendant  
22 fired 13 shots at approximately 8:28 p.m., not in  
23 the middle of the night, as he casually strolled  
24 through the courtyard of a NYCHA complex in the  
25 Bronx.

1 THE COURT: Do you have any  
2 understanding, or is there any evidence as to what,  
3 if anything, he was shooting at or why he was  
4 shooting?

5 MR. ROSENBERG: Not yet, Your Honor.

6 As laid out in the complaint, however,  
7 the weight of the evidence against the defendant is  
8 overwhelming. The individual who committed the  
9 September 21st shooting was caught on surveillance  
10 camera doing the shooting, and 13 shell casings were  
11 recovered. And there's also overwhelming evidence  
12 that we know the individual who committed the  
13 shooting is the defendant here. And those reasons  
14 are laid out in detail in the complaint, Your Honor,  
15 but I'm happy to go through them also briefly here.

16 Notably, as described in the complaint,  
17 Terrence Allen was involved in two encounters with  
18 the police subsequent to the September 21st shooting  
19 that were unrelated -- or one was related. One was  
20 unrelated. On September 28th, he was stopped by  
21 police driving a car that appeared to have the same  
22 characteristics as a car that the shooter from  
23 September 21st had been in just before the shooting.  
24 And body-worn camera footage from that incident  
25 confirms that Terrence Allen was driving the car,

1 and was stopped and to whom the car was registered,  
2 looks just like the clear images of the shooter in  
3 the September 21st shooting captured by surveillance  
4 camera.

5 Similarly, on October 10th, Terrence  
6 Allen was arrested by the New York Police Department  
7 officers based on having been charged in the state  
8 with crimes also arising from the September 21st  
9 shooting. At the time, he was also driving the  
10 Silver Mercedes-Benz that appeared in the -- with --  
11 the car with the same characteristics appeared in  
12 the September 21st shooting surveillance video, and  
13 it was the same precise car as Mr. Allen was driving  
14 on September 28th, same license plate, same VIN.

15 And there was also further evidence  
16 linking Mr. Allen to the crime, including some found  
17 this morning during the arrest of Mr. Allen. One  
18 feature, prominent feature, of the shooter on  
19 September 21st was that he was wearing a distinctive  
20 blue New York Yankees baseball cap with a red brim.  
21 That hat was seen this morning in plain view as the  
22 officers were arresting Mr. Allen in Long Island.

23 THE COURT: When you say "that hat," you  
24 mean a hat that appears similar to the one captured  
25 in the video?

1 MR. ROSENBERG: Yes, Your Honor. It  
2 appears very similar. It shares the same  
3 distinctive features.

4 In addition, the silver Mercedes that has  
5 the same light, that is precisely the same car as  
6 the October 10th and September 28th car was right  
7 out in front of the place of arrest this morning.  
8 And it appears -- I submit to the Court that it's  
9 exactly the same car as the shooter used in the  
10 21st -- September 21st shooting.

11 THE COURT: I understand your point in  
12 referencing these two other incidents is to  
13 demonstrate what you have described as the  
14 "overwhelming evidence" of Mr. Allen's guilt of the  
15 charged offense, but was there anything about  
16 those -- either of those two incidents that goes to  
17 the issue of danger or risk of flight, either in  
18 terms of resisting arrest or other things that were  
19 found on his possession or whatever it is that  
20 caused the officers to pull him over on  
21 September 28th?

22 MR. ROSENBERG: I don't submit those  
23 facts for that purpose, Your Honor. I'm simply  
24 attempting to show the overwhelming evidence that  
25 shows that Terrence Allen, the man who sits to my

1 right today, was the shooter on September 21st.

2 Talking about danger now. Beyond the  
3 offense conduct charged here, which, of course, is  
4 very dangerous, Mr. Allen's criminal history shows  
5 that he's a dangerous person. This is not the first  
6 time he's been involved with guns. He's been  
7 arrested for five prior felonies and convicted on  
8 two.

9 In 2018, Mr. Allen was arrested in  
10 possession of a loaded firearm and a large capacity  
11 ammunition-feeding device. He was not ultimately  
12 convicted of those charges, and he pled to a lesser  
13 offense in September 2022. But in 2006, perhaps  
14 most importantly, Mr. Allen was convicted after a  
15 jury trial of a robbery in the first degree. And in  
16 that case, Mr. Allen displayed what appeared to be a  
17 weapon during a forceful robbery. Mr. Allen was  
18 sentenced to an aggregate term of eight years  
19 imprisonment, and he was released in September 2013.

20 Before that, Your Honor, in 1999, Mr.  
21 Allen appears to have been arrested for, among other  
22 things, criminal possession of a weapon in the  
23 fourth degree. I'll also note, you know,  
24 Your Honor, that we have not yet recovered the  
25 firearm used in this shooting, and presumably the

1 defendant, Mr. Allen, still has access to it, and he  
2 has very recently shown that he's willing to use it.

3 I'll pause there, Your Honor, for any  
4 questions regarding the government's proffer about  
5 the defendant's dangerousness.

6 THE COURT: So the two prior felony  
7 convictions are the 2006 robbery conviction -- and  
8 what's the second one?

9 MR. ROSENBERG: That was not a  
10 conviction, Your Honor. I'm sorry if I misspoke.  
11 He was arrested in 2018 for possession of a gun, and  
12 he was eventually convicted of a -- of a lesser  
13 offense in 2022 and sentenced to time served.

14 THE COURT: So he has ...

15 MR. ROSENBERG: Yeah. The second -- he  
16 has been convicted of two felonies, Your Honor. The  
17 second is a drug felony that I was -- I didn't  
18 describe the facts of here, Your Honor.

19 THE COURT: Okay. When did that take  
20 place?

21 MR. ROSENBERG: That was in 2003.

22 THE COURT: Okay. I see. Criminal sale  
23 of a controlled substance in the fourth degree.  
24 That one?

25 MR. ROSENBERG: Yes.

1           THE COURT: Okay. And then I did want to  
2 ask you about this 2022 conviction because I was  
3 confused about that. Pretrial Service report refers  
4 to a conviction upon a guilty plea; something called  
5 General Violation of Local Law. I have no idea what  
6 that means.

7           But directly underneath that, it also  
8 reports on the same date the plea/verdict was  
9 vacated. So can you help me understand what that  
10 was about?

11          MR. ROSENBERG: I'm not sure I understand  
12 further than what's reported in the Pretrial  
13 Services report, Your Honor. I only know what I  
14 know from there, which is what the defendant was  
15 arrested for, and I'm not representing that he was  
16 convicted of that -- those offenses.

17          THE COURT: But he was arrested for  
18 criminal possession of weapons.

19          MR. ROSENBERG: He was arrested for being  
20 in possession of a loaded firearm and a large  
21 capacity ammunition-feeding device as well.

22          THE COURT: And do you know anything more  
23 about that charge, other than what's laid out in  
24 the --

25          MR. ROSENBERG: I do not.

1           THE COURT: Okay. Going back to the  
2 shooting incident, which underlies the charge in  
3 this case -- and you've explained that it's unknown,  
4 at least at the present time, to the government what  
5 Mr. Allen may have been shooting at or why he may  
6 have been shooting. But I assume you have some  
7 understanding of where the bullets went. Did they  
8 go into a wall, a building, tree?

9           MR. ROSENBERG: Your Honor, I don't know.  
10 I know that the shell casings were recovered at the  
11 scene of the shooting, in the courtyard of the NYCHA  
12 housing complex. No bullets were recovered, and  
13 there was a canvas done in local hospitals for  
14 victims and things like that, and none were found.

15           THE COURT: But where did the bullets go?  
16 You don't have any understanding of that?

17           MR. ROSENBERG: Not currently, Your  
18 Honor.

19           THE COURT: And you say there were people  
20 around. Could you elaborate on that?

21           MR. ROSENBERG: Yes, Your Honor.

22                   For instance, surveillance cameras --  
23 literally, at the time of the shooting, you can  
24 see -- and there's actually a photo in the  
25 complaint, if you have in front of you, Your Honor.

1 THE COURT: Page 5?

2 MR. ROSENBERG: That is image 12.

3 THE COURT: Great.

4 MR. ROSENBERG: There's a -- what  
5 appears to be a --

6 THE COURT: Page 6.

7 MR. ROSENBERG: Page 6, image 12.

8 The shooter, who the government says is  
9 Mr. Allen, is circled in yellow. There's a muzzle  
10 flash going off as he's shooting the gun on the  
11 lower left-hand corner of the image, which,  
12 probably, the government should have highlighted  
13 with a different-color circle, is an individual  
14 about 10 yards away from Mr. Allen.

15 THE COURT: Were there any other people  
16 in that photo?

17 MR. ROSENBERG: What we know, Your  
18 Honor -- not in that photo. But what we know, Your  
19 Honor, is that body worn camera footage from  
20 officers who responded to the scene minutes later  
21 show that there are other people around and they're  
22 talking to other people. So there are people  
23 around.

24 THE COURT: Well, the individual in the  
25 photo is, you know, diametrically opposite the

1 direction in which the shooter is shooting. And I  
2 don't want to make light of any shooting incident  
3 where people are in the vicinity, but clearly, that  
4 individual doesn't seem to be in a risk.

5 MR. ROSENBERG: The government is  
6 certainly not saying this individual is the target  
7 of this shooting. But, again, Your Honor, I want to  
8 emphasize, it's dangerous to shoot 10 meters away  
9 from anyone, even if you're shooting in the opposite  
10 direction. That's the government's view.

11 THE COURT: Yeah. And I realize this is,  
12 you know, New York City, not the cornfields of Iowa,  
13 but you really don't know what was in the vicinity  
14 of -- in the direction of what he -- where he was  
15 shooting?

16 MR. ROSENBERG: Not currently, Your  
17 Honor.

18 THE COURT: How can that be?

19 MR. ROSENBERG: Well, we're certainly  
20 going to investigate further and -- but we don't  
21 currently -- like, we don't know that yet, Your  
22 Honor.

23 THE COURT: Okay. And there is a  
24 state -- pending state charge based on the shooting  
25 against Mr. Allen?

1 MR. ROSENBERG: Yes. Yes, Your Honor.  
2 The next court -- Mr. Allen has been indicted. The  
3 next court date is November 8th in that case.

4 THE COURT: And what happened? Is there  
5 going to be bail in that case?

6 MR. ROSENBERG: Mr. Allen -- there were  
7 bail conditions that were set. Mr. Allen wasn't  
8 able to -- my understanding -- was not able to meet  
9 them for some time, so he was at Rikers for about  
10 ten days. Then he posted bail, and has been out  
11 since about -- approximately October 20th.

12 And I'll just note, Your Honor, on that,  
13 as came up in the violation preliminary hearing you  
14 were doing before, the -- as the government  
15 understands it, the standard for setting bail in the  
16 state of New York is different materially than the  
17 question before this Court, Your Honor.

18 And, pointedly, what I mean by that is  
19 that the primary focus of the New York Criminal  
20 Court's bail determination is risk of flight and  
21 probability of return to court, rather than also  
22 explicitly taking into account dangerousness,  
23 although the defendant's criminal history -- the  
24 statutory cite, Your Honor, is New York Criminal  
25 Procedure Law, § 510.10.

1                   And although some of the factors to be  
2                   considered in making a determination about whether  
3                   the defendant will return to court do -- can be seen  
4                   to relate to the defendant's, what you might  
5                   colloquially refer to as "dangerousness," it's not  
6                   the explicit focus of the Court's inquiry. That's  
7                   the government's understanding, Your Honor.

8                   THE COURT: You can move on to risk of  
9                   flight.

10                  MR. ROSENBERG: Thank you, Your Honor.

11                  The government also respectfully submits  
12                  that a preponderance of the evidence shows the  
13                  defendant poses a risk of flight. This is -- this  
14                  case represents the first time Mr. Allen is facing  
15                  federal charges, and he faces a lengthy sentence, up  
16                  to the statutory maximum of 15 years imprisonment.  
17                  As already described, the weight of the evidence  
18                  against him here is overwhelming. The defendant  
19                  also has a history, although the history is somewhat  
20                  in the past, of flight and non-compliance with  
21                  supervision.

22                  So I'm particularly talking here about  
23                  the experience, in Mr. Allen's case, that began in  
24                  March 2003 in which he was arrested on a drug-sale  
25                  offense in March of 2003. He was indicted two

1 months later. And two weeks after that, a warrant  
2 was issued for his arrest, and he didn't appear  
3 following that for a month -- approximately a month.

4 THE COURT: He was 20 years old at the  
5 time?

6 MR. ROSENBERG: Yes. I believe that's  
7 right, Your Honor. 21 -- 20.

8 In July of 2003, he was convicted by  
9 guilty plea. And in June of 2004, the following  
10 year, he was sentenced to a term of probation of  
11 five years. In October 2004 --

12 THE COURT: I'm sorry. I'm not on the  
13 same page as you.

14 MR. ROSENBERG: Okay.

15 THE COURT: What are you referring to  
16 now?

17 MR. ROSENBERG: Sorry, Your Honor. I  
18 missed that.

19 THE COURT: Can you point me to what page  
20 in the Pretrial Services report you're on.

21 MR. ROSENBERG: Yes, Your Honor. 8 --  
22 oh, it's on his -- I'm looking at his RAP sheet  
23 right now.

24 THE COURT: Oh.

25 MR. ROSENBERG: Let me move to the

1 Pretrial Services.

2 It's page 5, Your Honor.

3 THE COURT: Okay.

4 MR. ROSENBERG: So it says here in  
5 October of 2004, which was four months after he was  
6 sentenced to a term of probation -- and we know that  
7 from his RAP sheet, Your Honor.

8 On October 21, 2004, a bench warrant was  
9 issued for the defendant's arrest, and he was  
10 missing following that for two weeks, until  
11 November 5, 2004, when the bench warrant was  
12 vacated.

13 In November he was found, and his  
14 probation was revoked at that time, and he was  
15 resentenced to a term of one to three years for,  
16 again, it appears, selling drugs.

17 In July of 2005 he was paroled. And in  
18 October 2005 -- so that's three months later -- at  
19 the bottom of page 5, Your Honor, he was discharged  
20 from parole for violating parole. That's the first  
21 line bolded on page 6 of the Pretrial Services  
22 report. And it appears at the bottom of the page  
23 that he may have violated parole a second time.

24 Furthermore, Your Honor, in the  
25 defendant's criminal history, the government would

1 point to also an old, but still pertinent,  
2 conviction for resisting arrest from 2001. That's  
3 on page 5 of the Pretrial Services report. And his  
4 RAP sheet indicates that Mr. Allen used -- has used  
5 an alias in the past. And, in fact, his conviction  
6 for -- his conviction for robbery in 2006, you can  
7 see on page 6 of the Pretrial Services report, Your  
8 Honor, there is an italicized line in the middle of  
9 the page that said, "Arrested under the following  
10 name: Tony Green."

11 THE COURT: Can I see that --

12 MR. ROSENBERG: In some -- Your Honor,  
13 there are no conditions in the government's view,  
14 that can assure the defendant's appearance and, most  
15 importantly, that can assure the safety of the  
16 community. And the defendant should be detained  
17 pending trial for those reasons.

18 THE COURT: Thank you, Mr. Rosenberg.

19 MR. ROSENBERG: Thank you.

20 THE COURT: Ms. Levine?

21 MS. LEVINE: Thank you, Your Honor.

22 I want to start by talking about the  
23 timeline of this offense. The alleged shooting took  
24 place on September 21st of 2023. Seven days later,  
25 on September 28th of 2023, Mr. Allen is arrested in

1 a car stop. He's -- it's for tinted windows or  
2 something of the like, and he's released. And the  
3 government kept investigating.

4 And then on October the 5th, again, for a  
5 traffic-related offense, he's pulled over, and  
6 again, he's released, and the government keeps  
7 investigating. And then on October the 10th, he  
8 gets arrested for this case, for this shooting.  
9 He's put in handcuffs, he's read his rights, he's  
10 brought to the precinct, and he goes to Bronx  
11 Criminal Court, where he's arraigned on these exact  
12 charges. Bail is --

13 THE COURT: Not these exact charges.

14 MS. LEVINE: The -- for this shooting.  
15 For this precise case.

16 THE COURT: He's not charged with the  
17 shooting in this case.

18 MS. LEVINE: For the actions that were  
19 allegedly undertaken in the Melrose Houses in which  
20 a gun was discharged on September 21st of 2023.

21 And, Your Honor, to the extent these  
22 cases are overlapping, it's absolutely my experience  
23 that the state case is almost always dismissed when  
24 the case is made federal or trigger locked, or  
25 whatever the word we use for it is. But I don't

1 expect him to be facing charges in both  
2 jurisdictions. I think the feds have now taken this  
3 case, and now he's here.

4 But be that as it may, he gets arrested  
5 on October the 10th. He gets charged in connection  
6 with the shooting at the Melrose Houses on  
7 September 21st of 2021 -- 2023, and bail is set in  
8 the amount of 50,000 -- in the amount of a \$50,000  
9 bond.

10 The government is correct, it takes his  
11 family about a week and a half to put together the  
12 money that's necessary to go to a bail bondsman and  
13 pay a portion of that. Two people had to sign for  
14 Mr. Allen with the bail bondsman in the state, and  
15 he was ultimately released on October the 20th of  
16 2023, so that was ten days ago.

17 This morning -- and when he was -- sorry.

18 Then on October the 10th, when he's  
19 arrested, they ask for his biographical information,  
20 his pedigree information. He gives it to them, and  
21 he gives them the address where he's been living.  
22 It was at that address where he was this morning  
23 when the feds -- when the marshals went and picked  
24 him up because the case had been federalized.

25 And I say all of this to say that every

1 single piece of that timeline weighs against any  
2 risk of flight. Mr. Allen was exactly in the  
3 location that he had provided to the state court for  
4 where he would be, the address he provided to the  
5 Bronx bail bondsman. He was exactly where he said  
6 he would be. And going back before the arrest, all  
7 those small encounters with the police, if somebody  
8 wants to flee, they flee. To stay in the vicinity,  
9 to stay in a place where he could easily be arrested  
10 six weeks later indicates that he's not going  
11 anywhere.

12 And, Your Honor --

13 THE COURT: Weren't those encounters  
14 before he was arrested on the state case --

15 MS. LEVINE: They -- yes. But he was  
16 arrested -- right. But to the -- sorry.

17 I guess what I'm trying to say is, he's  
18 been around since September 28th until now for more  
19 than a month. We know exactly where he is. He's  
20 here in the Southern District of New York. He's  
21 had --

22 THE COURT: Hasn't he been here all his  
23 life?

24 MS. LEVINE: Well, that -- that's exactly  
25 what I was going to say, which is --

1                   THE COURT: I'm guessing that's not an  
2 argument for you, but it's ...

3                   MS. LEVINE: It's my -- well, it's my  
4 next argument.

5                   No, but I think that for people who --  
6 if, in fact, he is the person who did this shooting,  
7 the behavior subsequent to that, if it was covert,  
8 if he was not driving his car, if he was not in the  
9 district, if he was using aliases. If he was --  
10 there are lots of things people can do to -- if they  
11 don't intend to be up front with law enforcement,  
12 and he did none of those things.

13                  And particularly, over the course of the  
14 last ten days, he's been out on bail in the state,  
15 having put his mother and a friend's livelihoods on  
16 the line for a \$50,000 bond. And where was he?  
17 Exactly at home, where he was supposed to be, this  
18 morning when the marshals picked him up. That is  
19 extremely strong evidence that Mr. Allen is going to  
20 follow the rules of bail and -- because he already  
21 has.

22                  THE COURT: For ten days?

23                  MS. LEVINE: For the last ten days,  
24 absolutely.

25                  THE COURT: Okay.

1 MS. LEVINE: And the -- in connection  
2 with his bail obligations in the state, one, he had  
3 to check in with the bail bondsman. I understand  
4 the date for him to do that in -- was -- one of the  
5 check-ins was today. As soon as he was picked up,  
6 he alerted his family members to call the bail  
7 bondsman. He's in extremely close touch with them  
8 so that they know exactly what he is and isn't doing  
9 of his own volition. And over the last ten days  
10 since his arrest, Mr. Allen returned to the life  
11 that he has had over the last ten years, and it's  
12 those ten years I would like to now talk about.

13 Mr. Allen was released from state prison  
14 on his last -- so his prior felony convictions are  
15 from 2003 and 2006. He gets out of prison in 2013.  
16 Since 2013, he has had the same kind of job. He's a  
17 residential manager at various homeless shelters.  
18 Right now, he has two jobs run by two nonprofits  
19 that each have their own set of shelters in the  
20 Eastern District of New York and Long Island. And  
21 he goes. He works 40 hours a week for one company  
22 and 20 hours a week for the other company, serving  
23 as a residential manager.

24 THE COURT: Give me those hours again.

25 MS. LEVINE: It's 40 hours a week at one

1 company and 20 to 22 hours at the second company.

2 So he -- for the last ten days, he's been  
3 back at work. If he's released today, he can go  
4 back to work tomorrow. We spoke to his boss. His  
5 boss is actually the person he was living with in  
6 Long Island. He said, of course he can come back to  
7 work tomorrow. We stand ready to let him keep  
8 working. They've let him keep working for the last  
9 ten days, and they hope that he continues to work  
10 into the future.

11 THE COURT: So they know about both the  
12 state arrest and the new arrest, and that boss, at  
13 least you are representing to me, said that he will  
14 continue to employ Mr. Allen?

15 MS. LEVINE: Precisely. And --

16 THE COURT: Is that the 40-hour a week  
17 job or the 20- to 22-hour a week job?

18 MS. LEVINE: He's the boss of both of  
19 them?

20 Oh, he's the boss at both of them. I  
21 guess he's his supervisor at both companies.

22 Is that right? Okay.

23 THE COURT: Okay.

24 MR. ROSENBERG: This is a man who sits  
25 before you with incredibly strong ties to the

1 community in addition to his track record at work  
2 for the last decade, a job he still has and can  
3 return to, and the fact that he's lived in New York  
4 his whole life. He's never had a passport. He's  
5 never traveled.

6 He is married. His wife is here in the  
7 courtroom. She's raising her arm for Your Honor's  
8 identification. She -- they haven't been living  
9 together in the last few years. Mr. Allen's been  
10 living on Long Island, which is close to his jobs,  
11 with his supervisor. But upon his arrest today and  
12 discussing, kind of, what federal bail would  
13 require, they both want him to go live with her.

14 She lives here in the Southern District  
15 of New York. She lives within walking distance,  
16 actually, of the courthouse. And not only is she  
17 happy to have him there, we had a very long -- we  
18 explained to her that he may very well have to wear  
19 an ankle monitor if he were released, that that was  
20 going to be part of the package we propose to the  
21 Court, that that ankle monitor would have to be set  
22 up in her home, that Pretrial Services would have to  
23 have an opportunity to, you know, check in on him  
24 and follow all the rules.

25 She's also willing to co-sign. She's a

1 financially responsible person. She has a job, and  
2 she's willing to co-sign for him. Also willing to  
3 co-sign for him, his mother, whom he speaks to every  
4 day. She also lives in the Southern District of New  
5 York. She also signed the state bond. She's also a  
6 financially responsible person. And then we have a  
7 third co-signer who's a friend, who also signed the  
8 state bond, and is willing to, again, sign  
9 Mr. Allen's bond here.

10 I should say that in addition to his mom,  
11 his wife, his friends, his boss, his job, his -- he  
12 has one child who lives in the Southern District of  
13 New York. He supports that child financially with  
14 the money that he earns at this job. And those are  
15 robust connections to the community. And we submit  
16 that asking those people, the combination of people  
17 I just mentioned, to sign a bond would be an  
18 important part of a combination of conditions that  
19 can be set here.

20 THE COURT: His job or jobs, plural, are  
21 both out in Long Island?

22 MS. LEVINE: They are.

23 THE COURT: Where in Long Island?

24 MS. LEVINE: Huntsville and -- Union --  
25 sorry. I'm so sorry. Huntsville is wrong.

1 Hempstead and Uniondale.

2 THE COURT: And how does he get -- or  
3 more accurately, how would he get there if he were  
4 to live here in the Southern District of New York  
5 with his wife?

6 MS. LEVINE: I mean, Judge, he has a  
7 driver's license and a car, so that would be one  
8 way. And also, there are trains that go to both of  
9 their locations -- both of those locations,  
10 obviously.

11 And look, the -- there is no question  
12 that the allegations in this case are serious. I'm  
13 not going to minimize them, but I -- it is incumbent  
14 upon me, I think, to -- the government mentioned the  
15 statutory maximum, which is, of course, 15 years.  
16 The statutory minimum in this case, of course, is  
17 zero. There's absolutely no requirement,  
18 necessarily, that he go to jail on this case. We  
19 have lots of clients -- I have lots of clients who  
20 have been granted bail, robust bail packages, but  
21 bail in these kinds of cases. There is no  
22 presumption of detention, which I've argued many  
23 times in this court means there's a presumption of  
24 release, that -- and, of course, the question is  
25 not, are -- is there some danger, or is there some

1 risk of flight? The question is, are there  
2 conditions that can be overcome? And so we submit  
3 that the following bail package is appropriate in  
4 this case.

5 We submit that -- a \$50,000 personal  
6 recognizance bond co-signed by three financially  
7 responsible people. We suggest that he be outfitted  
8 with an electronic monitor. We suggest that the  
9 technology be left to the expertise of Pretrial  
10 Services. We -- the next condition would be that he  
11 continue his employment, as we're confident that he  
12 can.

13 And, of course, along with the other  
14 standard obligations, which are equally important,  
15 travel restrictions to the Southern and Eastern  
16 District of New York, Pretrial supervision as  
17 directed, no possession of a weapon, et cetera, et  
18 cetera.

19 So, Your Honor, this is a robust bail  
20 package. It is appropriate for a person who was  
21 already released on bail and was found at home in  
22 the same location where he previously was, who now  
23 has a place within walking distance of the  
24 courthouse, where he can wear an ankle monitor with  
25 his wife. And the people in his life who have

1 already put themselves financially on the line for  
2 him are willing to do it all over again. And that  
3 indicates to Your Honor that there are people in  
4 this community who trust him. Obviously, his  
5 employer trusts him. And for all of these reasons,  
6 there are conditions that can be set here.

7 THE COURT: You focus your argument on  
8 risk of flight and ties to the community. And,  
9 frankly, despite Mr. Rosenberg's argument, I'm not  
10 really persuaded that he's a serious risk of flight.  
11 But I would like you to address the danger issue,  
12 which I think is the real issue in this case.

13 MS. LEVINE: Sure. So the -- I think, in  
14 my opinion, the sole risk of danger articulated in  
15 the record that I have before me is the instant  
16 offense conduct. And I'm not going to minimize --

17 THE COURT: Well, there is a criminal  
18 history --

19 MS. LEVINE: So I'm going to --

20 THE COURT: -- that includes firearms.

21 MS. LEVINE: I'm going to get to that in  
22 just a second. But first and foremost is -- of  
23 course, are the allegations here. I do think that  
24 if the Court were to put him on an ankle monitor and  
25 require, say, home detention with it, which would

1 mean he's home in lower Manhattan with his wife, or  
2 in the Eastern District of New York on Long Island,  
3 the Court could prohibit him from going to the  
4 Melrose Houses in its entirety. You could ban the  
5 ZIP code. You could probably ban the borough, I  
6 think, if you wanted.

7 So to the extent that there is some kind  
8 of -- whatever led to the shooting as alleged in the  
9 complaint, we could remove him from that address,  
10 area, people, vicinity entirely with the conditions.  
11 So I think that is one important way that the bail  
12 conditions can combat the potential risk of  
13 flight -- excuse me. I'm so sorry -- the  
14 dangerousness that has arisen from the allegations  
15 in this case.

16 With regard to his criminal history, you  
17 know, I really worry when the government uses arrest  
18 charges instead of convictions, like in the 2018  
19 case, against somebody. All we know about this case  
20 from 2022 is that he allegedly pled guilty to  
21 general violation of local law, misdemeanor. And it  
22 also says that that plea was vacated. There is no  
23 basis for the Court to conclude on that record that  
24 he possessed a firearm or that he possessed a  
25 firearm with a large ammunition device or whatever

1 the government said.

2 Arrest charges are just that. They are  
3 arrest charges. They don't even have to sustain a  
4 finding of probable cause. And so the -- to use  
5 that against Mr. Allen in this context I think is --  
6 should not be given weight by the Court.

7 Looking further back to 2003 and 2006,  
8 you are absolutely correct, that the 2006 case is a  
9 serious one. And it looks like it was -- it's hard  
10 to -- it looks like, yeah, he was convicted of what  
11 is a violent felony in the Bronx after trial, and  
12 for that crime, he went to prison. He went to  
13 prison for, it looks like, up to eight years. He  
14 was released on parole in 2013 and then was  
15 successfully discharged from parole in 2019.

16 So I'm not saying those things don't  
17 matter. I'm saying that there are conditions that  
18 can overcome them. Keep him away from this location  
19 entirely, monitored by an ankle bracelet. That's  
20 one huge way to overcome the potential danger here.  
21 And given all the good things that have been going  
22 on in his life and given all of the pro-social  
23 connections he has -- and, you know, one other  
24 thing.

25 You know, we talk about bonds as if they

1     only relate -- or co-signers primarily as they  
2     relate to risk of flight, but I would suggest to you  
3     that they also relate to the safety of the community  
4     because Mr. Allen is tying his mother's financial  
5     future, his wife's financial future to his behavior.  
6     And that has to be -- there has to be some kind of  
7     behavior -- modification pressure there, right?

8             That's one of the reasons we ask for  
9     co-signers, is so that the people in your life say,  
10    I'm on the line for this too. You have to stay out  
11    of trouble, and you have to follow the rules, and  
12    that includes not committing any acts of violence.

13            So, obviously, I'm happy to answer any  
14    questions, but I think that that -- those conditions  
15    altogether -- for someone who has a job and has  
16    these ties to the community and financially supports  
17    a child, bail is appropriate under 3142.

18            THE COURT: And without intending to  
19    trample upon the Fifth Amendment, can -- is there  
20    anything you can tell me that you would like to tell  
21    me about the circumstances of the shooting?

22            MS. LEVINE: I have no information to  
23    share at this time, other than, like I said, I  
24    think, certainly, our ankle-bracelet technology can  
25    keep him fully away from there.

1 THE COURT: Mr. Rosenberg?

2 MR. ROSENBERG: If the government may,  
3 Your Honor, so I'll start -- I understand that  
4 Your Honor is inclined to disagree with our risk of  
5 flight argument. I'd just like to say one more  
6 thing about that.

7 Ms. Levine discussed that he was exactly  
8 where he was supposed to be. He's done -- he's been  
9 around. He's been around in the last ten days. In  
10 the -- from the government's --

11 THE COURT: I wasn't paying any attention  
12 about it. I mean --

13 MR. ROSENBERG: Okay.

14 THE COURT: But more compelling to me are  
15 his community ties. He's lived here all his life.  
16 He has a wife, admittedly somewhat estranged,  
17 apparently, but willing to take him back. He has a  
18 job, a significant job. He has no real recent  
19 history of -- in my view, of failure to appear.

20 So those are the things that make me  
21 think that the risk of flight argument is not a  
22 strong one. But no, the fact that he hasn't  
23 violated his state bail over the last ten days is  
24 not one of the factors in my analysis.

25 MR. ROSENBERG: Understood, Your Honor.

1                   And I won't belabor the point, but I  
2                   wasn't intending to make that point. What I was  
3                   intending to say is that the defendant has not been  
4                   at his Long Island address since he was released.  
5                   The government had trouble finding him, in fact.  
6                   This shooting occurred in the Bronx at a location  
7                   that it's unclear what the defendant's connection  
8                   with is, okay.

9                   And he also -- before last night, the  
10                  government's cell-site location information in real  
11                  time indicated that for days, the defendant had been  
12                  at his wife's house -- apartment near the  
13                  Williamsburg Bridge. So he was there until last  
14                  night. And agents this morning had to go to Long  
15                  Island to arrest him, even though that's not where  
16                  they were expecting him to be this morning.

17                 So there are also multiple addresses  
18                 listed on the defendant's RAP sheet that he's  
19                 associated with, including the one on Long Island,  
20                 to be sure, Your Honor, not including -- and there  
21                 are two others that are listed. Those do not  
22                 include the one where his wife lives, and they do  
23                 not include the one in the Bronx where the shooting  
24                 happened, where he was going in and out of before  
25                 and after the shooting. And so there's complication

1 here, Your Honor. It's not as simple as the  
2 defendant made it out to be.

3 THE COURT: And the address he had given  
4 to the state court in connection with the state  
5 case, does anybody know what that is?

6 MR. ROSENBERG: I don't, Your Honor.

7 MS. LEVINE: Sorry. It's on page 2 of  
8 his RAP sheet. It is the Long Island address where  
9 he was arrested this morning.

10 THE COURT: I'm sorry. I'm confused. He  
11 was arrested at the Long Island address?

12 MR. ROSENBERG: He was arrested at the  
13 Long Island address.

14 THE COURT: I thought you had said --

15 MS. LEVINE: Yeah.

16 MR. ROSENBERG: No. She --

17 MS. LEVINE: Sorry.

18 THE COURT: Ms. Levine --

19 MR. ROSENBERG: Sorry. Can I try to  
20 clear this up, Your Honor?

21 THE COURT: Yes.

22 MR. ROSENBERG: Until last night,  
23 cell-site location information that the government  
24 has indicated that the defendant was not in Long  
25 Island. He went there last night. He was at his

1 wife's address or in the vicinity of his wife's  
2 address in downtown Manhattan for days before that.  
3 So it wasn't as though he was -- he'd been there the  
4 whole time since he was released.

5 THE COURT: Would that be a violation  
6 of --

7 MR. ROSENBERG: No, Your Honor. No.

8 THE COURT: -- his conditions of release  
9 or whatever?

10 MS. LEVINE: No.

11 MR. ROSENBERG: But he is -- the  
12 government is simply making the point, and won't  
13 belabor the point any further, that the defendant is  
14 not static and not -- he's been moving around, and  
15 we don't understand exactly all the places that he's  
16 gone.

17 I'll just --

18 THE COURT: Why isn't an ankle bracelet  
19 enough here?

20 MR. ROSENBERG: So -- okay. So, Your  
21 Honor, the government really wants to hit, once  
22 again, the point of the dangerousness of this  
23 conduct, in addition to the defendant's criminal  
24 history, that -- this conduct in particular.

25 The photograph that we already discussed,

1 Your Honor -- I understand Your Honor's point that  
2 this was not done in the middle of Times Square and  
3 there's a photo with someone else in it, but he's  
4 shooting the other way. This is still incredibly  
5 dangerous, in the government's view.

6 For instance, as you noted, he's shooting  
7 in the diametrically opposite way. Suppose he was  
8 shooting at someone. The other person would shoot  
9 right back at him and the woman -- the individual is  
10 right behind him. It's lucky that that wasn't the  
11 case. An ankle bracelet would not have stopped this  
12 shooting, or might not have stopped this shooting.  
13 It's not clear to the government why those things  
14 are necessarily related. Even if you were coming  
15 and going to and from work or home, you can still do  
16 a shooting in the middle of a public courtyard.

17 And so, you know, we, again, join the  
18 Pretrial Services recommendation, which they spell  
19 out the reasons for on pages 7 and 8 of their  
20 report, that there are no conditions or combination  
21 of conditions that will reasonably assure the safety  
22 of the community, primarily, but also, in the  
23 government's view, the appearance of the defendant.

24 Thank you, Your Honor.

25 THE COURT: Thank you.

1 I'd like to take a short break and mull  
2 this one over a little bit and come back out and let  
3 you know what my decision is.

4 (A recess was taken.)

5 THE COURT: I think this is a close case,  
6 but after considering the arguments of counsel and  
7 Pretrial Services report and the criminal complaint  
8 in this case, I'm going to order the defendant  
9 detained. I find there are no conditions that I can  
10 impose that will reasonably assure the safety of the  
11 community.

12 My ruling does not rest on risk of  
13 flight. I don't believe the government has met its  
14 burden, even by a preponderance of the evidence to  
15 show that Mr. Allen is a flight risk, given his  
16 strong ties to the community. But on the issue of  
17 dangerousness, and even though the government has a  
18 higher burden of showing a danger to the community  
19 by clear and convincing evidence, as I weigh the  
20 factors that I am required to look at, I do believe  
21 they weigh in the government's favor.

22 Beginning with the nature and  
23 circumstances of the offense -- and that's really  
24 the most important factor in my mind -- you have a  
25 situation where not only was Mr. Allen allegedly in

1 possession of ammunition, and, although not charged  
2 with it, a firearm as a previously convicted felon,  
3 but the allegation here is that he used that firearm  
4 to shoot 13 rounds in a courtyard of an apartment  
5 complex.

6           There is nothing before me to show that  
7 people were -- people's lives were put in jeopardy  
8 from that shooting incident in terms of any evidence  
9 that there were people in the vicinity of where the  
10 shots were fired or anything by way of a motive that  
11 Mr. Allen, or whoever the shooter was, would have  
12 had to hurt somebody. But it is 13 shots in the  
13 middle of a densely populated urban area.

14           And, frankly, if there was no motive for  
15 that shooting, that doesn't make me feel more  
16 comfortable from a dangerousness point of view. It  
17 may be a different type of danger, but it's still a  
18 serious concern of danger to the community if you  
19 have somebody shooting a weapon 13 times for no  
20 reason.

21           The weight of the evidence does seem very  
22 strong to me, based on the criminal complaint and as  
23 described and summarized by counsel for the  
24 government. There's certainly no burden on the  
25 defense at this point to persuade me that Mr. Allen

1 is not guilty of these charges. But really, given  
2 the record before me, that factor as well, the  
3 weight of the evidence weighs strongly in favor of  
4 the government.

5 In terms of Mr. Allen's history and  
6 characteristics, I don't think that presents  
7 overwhelming indicia of dangerousness, but it  
8 certainly does present some. There are several --  
9 well, there is a conviction, for one thing, of a  
10 robbery in which a firearm, or what appeared to be a  
11 firearm, was brandished. And there are additional  
12 arrests involving weapons. I wish the Court knew  
13 more about them, in particular, the 2018 arrest.

14 But nevertheless, the fact that there  
15 was, sort of, a pattern of Mr. Allen and his  
16 involvement with firearms, which appears to be the  
17 case from the record before me, weighs very heavily  
18 when I consider the issue of danger to the  
19 community.

20 And so I do believe, considering the  
21 final factor, that the nature and seriousness of the  
22 danger to the community is significant here because  
23 of Mr. Allen's past history with weapons and, most  
24 importantly, his most recent history with this  
25 weapon and this shooting incident.

1 I have considered carefully Ms. Levine's  
2 arguments and her proposed package, but I don't  
3 believe those conditions would adequately protect  
4 the safety of the community. Even with an ankle  
5 bracelet, Mr. Allen would be free to move around.  
6 We don't know where the firearm is. And, again,  
7 given the nature of the incidents and the strength  
8 of the evidence, the danger to the community seems  
9 palpable to me.

10 I do appreciate the willingness of  
11 members of the defendant's family and his wife's  
12 appearance here today to support him, but because of  
13 what I've described, I find that, even with a bond  
14 co-signed by the three co-signers that Ms. Levine  
15 proposed, I cannot reasonably assure the safety of  
16 the community. So that is my ruling.

17 MS. LEVINE: Thank you, Your Honor.

18 THE COURT: We need to set a date for the  
19 preliminary hearing.

20 MS. LEVINE: The 14th day, please.

21 THE COURT: Preliminary hearing will be  
22 set for Monday, November 13, 2023.

23 Anything further from the government?

24 MR. ROSENBERG: No, Your Honor. Thank  
25 you.

1 THE COURT: Anything further from the  
2 defense?

3 MS. LEVINE: Just one minute.

4 Your Honor, I'm just discussing a medical  
5 order, which I think I'm going to request from the  
6 Court.

7 THE COURT: Yes, of course.

8 MS. LEVINE: I'm just going to get the  
9 details about it.

10 Your Honor, nothing further, other than a  
11 medical order that I'll provide to your staff  
12 shortly.

13 THE COURT: Thank you. So I will sign  
14 that.

15 MS. LEVINE: Thank you very much.

16 THE COURT: Are we adjourned?

17 Thank you, all. Have a good night.

18 MR. ROSENBERG: Thank you.

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C E R T I F I C A T E

I, Adrienne M. Mignano, certify that the foregoing transcript of proceedings in the case of USA v. Terrence Allen; Docket Number: 23MAG6928 was prepared using digital transcription software and is a true and accurate record of the proceedings.

Signature Adrienne M. Mignano  
ADRIENNE M. MIGNANO, RPR

Date: November 15, 2023